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INTERNAL AFFAIRS BUREAU
INVESTIGATIVE SUMMARY
IAB CASE # IV 2343020

SUBJECT: Lovell C. Brown, Deputy, # [redacted]

LOCATION: Hollywood Boulevard/La Brea Avenue
Los Angeles, California 90046

DATE/TIME: October 15, 2013, 0230 hours, Tuesday

DEPARTMENT KNOWLEDGE DATE: October 15, 2013

PRIMARY INVESTIGATOR: Sergeant David Wessol

INVESTIGATIVE SUMMARY

Deputy Brown was scheduled to work Men's Central Jail on October 14, 2013, PM shift (see Exhibit A, Men's Central Jail In-Service, 10/14/13, page 3). On October 14, 2013 at 1130 hours, Deputy Brown called in sick for his scheduled shift to Watch Sergeant [redacted]. Sergeant [redacted] advised Lovell Brown the call in for October 14, 2013 was in conjunction with his regular days off and it was his fourteenth sick call-in in the past twelve months. Lovell Brown acknowledged Sergeant [redacted] advisement and said he was sick (see Exhibit B, Absence Request, Telephonic Notice and Office Correspondence from Sergeant [redacted] to Lieutenant Stan Penner).

On October 15, 2013 at 0230 hours, Deputy Brown was stopped by Los Angeles Police Officers [redacted] for excessive motor vehicle speed. Upon contacting Lovell Brown, the driver of the vehicle, Officer [redacted] noticed the odor of an alcoholic beverage emitting from the vehicle. A driving under the influence investigation was initiated which resulted in Lovell Brown's arrest for 23152 (A) of the California Vehicle Code (see Exhibit C, Los Angeles Police Department Arrest Report).

The Los Angeles Police Department arrest report indicated Deputy Brown was uncooperative and refused to participate in standardized field sobriety tests as requested. Deputy Brown was arrested and transported to Hollywood Station for booking and processing. Deputy Brown refused to provide Officers [redacted] and [redacted] a breath sample. Men's Central Jail Unit Commander, Captain Dan Dyer, responded to Hollywood Station and ordered Deputy Brown to provide a breath sample for administrative purposes. Los Angeles Police Officer [redacted] obtained the breathalyzer

sample form Deputy Brown. Deputy Brown's blood alcohol content on October 15, 2013, at 0428 hours was .104 and .105 (see Exhibit C, page 14).

Deputy Brown was charged with 23152 (a) California Vehicle Code, Driving a Vehicle While Under the Influence of Alcohol by the Los Angeles City Attorney's Office. The court proceedings took place at Los Angeles Metropolitan Court located at 1945 Hill Street in Los Angeles. Deputy Brown pled guilty to one count of 23109 (c) California Vehicle Code, Motor Vehicle Exhibition of Speed on a Highway. The 23152 (a) California Vehicle Code, Driving a Vehicle While Under the Influence of Alcohol charge was dismissed (see Exhibit D, Minute Order, Superior Court of California, County of Los Angeles).

The California Department of Motor Vehicles conducted an administrative review of Deputy Brown's driving privileges as a result of his failure to provide a breathalyzer sample during a driving under the influence investigation. Deputy Brown's California Driver License was suspended, effective April 4, 2014, until April 04, 2015. The suspension does not allow Deputy Brown to operate a motor vehicle during the course of his employment or while traveling to and from place of employment (see Exhibit E, Deputy Brown's California Driver License Record).

During the initial investigation it was alleged Deputy Brown was working in an off duty security capacity (see Miscellaneous Documents, Request for Internal Affairs Bureau Investigation, page 2). Deputy Brown's "Report of outside Employment Activities' form did not indicate any off duty employment (see Exhibit F, Employee Report on Outside Employment Activities dated March 13, 2013). Officer [redacted] statement indicated he had no knowledge of Deputy Brown working as an off duty security guard. However, Officer [redacted] statement indicated the owner of the vehicle Deputy Brown was driving said Deputy Brown has worked for him in the past but did not indicate if Deputy Brown was working for him on October 14 &15, 2013 (see Officer [redacted] transcribed interview, page 6 of 8).

Officer [redacted] statement indicated Deputy Brown said he was working as an off duty security guard at the time of the incident (see Officer [redacted] transcribed interview, page 4 of 5). Deputy Brown denied he was working in any off duty employment capacity when he was detained by Officers [redacted] and [redacted] (see Deputy Brown's transcribed interview, page 13 of 14).

Internal Affairs Bureau attempted to contact passengers of the vehicle Deputy Brown was driving but were unable to obtain witness statements from them due to their refusal to make contact with the Investigator. Officer [redacted] had an audio recording of the detention and arrest of Deputy Brown that was turned over to the Los Angeles City Attorney's Office. Internal Affairs Bureau requested a copy of the audio recording but the request was denied. The Los Angeles City Attorney's Office destroyed the audio recording after the case disposition was completed.

Los Angeles County Sheriff's Department Senior Criminalist [redacted] was interviewed as an expert witness regarding the administrative investigation. Mister [redacted] was provided some basic biographical information for Deputy Brown in order to calculate specific blood alcohol content and metabolism rates. Mister [redacted] reviewed

the information, signed and placed his employee numbers on the paper containing the information used for this investigation (see Exhibit G, printed biographical information of Deputy Brown). Please refer to Mister [redacted] statement for further details.

INTERVIEWS

The following interview summaries were based on statements provided by the witnesses and the subject during audio recorded interviews. For complete detailed statements, refer to the transcripts or digital audio recordings of the interview included in this investigation.

Witness Sergeant [redacted]

Sergeant [redacted] was interviewed on March 26, 2014 at 1603 hours by Internal Affairs Bureau Investigators David Wessol and John Adams. The interview was conducted at Men's Central Jail.

On October 14, 2013 at 1134 hours, Sergeant [redacted] received a phone call from Deputy Brown indicating he was calling in sick for his regular schedule shift on October 14, 2013, that was scheduled to begin at 1400 hours and conclude at 2200 hours. Sergeant [redacted] confirmed he did speak to Deputy Brown and advised him the sick call in would mark his fourteenth call in within the last twelve months and the call in was also in conjunction with his regular days off. Deputy Brown acknowledged Sergeant [redacted] advisement and said he was sick and would not be reporting for his scheduled PM shift.

Witness, Los Angeles Police Officer [redacted]

Los Angeles Police Department's Officer [redacted] was interviewed on February 18, 2014 at 1844 hours by Internal Affairs Bureau Investigators David Wessol and Joseph Fleischmann. The interview was conduct at Los Angeles Police Protective League Attorney Randal Quan's Office located at 420 South San Pedro Street Suite 102, Los Angeles California.

On October 15, 2013 at approximately 0210 hours, Officers [redacted] and [redacted] affected a traffic stop on a black 2005 Bentley on Hollywood Boulevard for excessive speed. The vehicle was driven by Deputy Brown. Upon contacting Deputy Brown, Officer [redacted] smelled the odor of alcohol on his breath. Deputy Brown identified himself as a "law enforcement individual" (see transcribed interview, page 2 of 8). Deputy Brown's identification as a member of law enforcement was courteous and professional. Deputy Brown did not indicate to Officer [redacted] he was carry a firearm nor was one found during the investigation.

During the investigation, Deputy Brown asked Officer [redacted] a "couple of times" why he was pulled over. Officer [redacted] believed the repeated questions from Deputy Brown was a result of his intoxication level and not an effort to displaying a bad attitude (see transcribed interview, pages 3 & 4 of 8).

Deputy Brown made some illogical statements to Officer [redacted] of which he could not really understand. Officer [redacted] said the statements were slurred and he could not make out the statements. During the investigation, Deputy Brown became

uncooperative by refusing to participate in a standardized field sobriety test (see transcribed interview, page 4 of 8). Officer [redacted] handcuffed Deputy Brown to avoid any further escalation and requested a Los Angeles Police Supervisor to respond.

Deputy Brown refused to participate in a standardize field sobriety test and made statements saying he wanted to speak to his Captain. After Deputy Brown was handcuffed he was cooperative and did not display any adverse attitude toward Officer [redacted] or his partner Officer [redacted] once he realized he was going to be arrested (see transcribed interview, page 6 of 8).

Deputy Brown was transported to Hollywood Station for booking and processing. During the booking process, Deputy Brown was cooperative but did refuse to provide a breath sample to Los Angeles Police. However, Deputy Brown did provide an administrative breath sample under the direct order of Captain Dan Dyer (see Exhibit C, page 14).

Witness, Los Angeles Police Officer [redacted]

A telephone interview of Office [redacted] was conducted on March 14, 2014 at 1105 hours by Internal Affairs Bureau Investigator, David Wessol. The telephone interviewed was audio recorded and transcribed.

Officer [redacted] assisted his partner, Officer [redacted] with a traffic stop of a Black Bentley driven by Deputy Brown. Deputy Brown identified himself as a Deputy Sheriff and was calm and cooperative but did have a little bit of a "cocky attitude." Deputy Brown did not want to "go along with the program" until a Los Angeles County Sheriff's Department supervisor was present (see transcribed interview page 1 & 2 of 5).

Deputy Brown eventually stepped out of the vehicle as requested and continually asked why he was pulled over. Deputy Brown was provided an answer each time he asked the question but did not remember the answer due to alcohol intoxication.

Deputy Brown was uncooperative by refusing to answer questions and participate in standardized field sobriety tests. Deputy Brown was handcuffed as a result of his uncooperative behavior and a Los Angeles Police Department Supervisor was requested to respond to the scene. Deputy Brown refused to take the sobriety tests unless a Los Angeles County Sheriff's Department supervisor was present (see transcribed interview page 3 of 5).

Deputy Brown told Officers [redacted] and [redacted] he was working as an off duty security guard at the time of contact by Los Angeles Police Department. The passenger in the detained vehicle also confirmed that information as well. The front passenger of the vehicle was described as a muscular male Black who told the Officers he was working as an off duty security guard (see transcribed interview page 4 of 5).

Deputy Brown was cooperative during the arrest and booking process but did refuse to take a breathalyzer test to determine his blood alcohol content. Captain Dan Dyer ordered Deputy Brown to provide a breath sample for administrative purposes that was administered by Los Angeles Police Department.

Witness Senior Criminalist [redacted]
Los Angeles County Sheriff's Department, Senior Criminalist, [redacted] was interviewed on March 18, 2014 at 1303 hours by Internal Affairs Bureau Investigator David Wessol. The interview was conducted at the Downey Crime Lab at Rancho Los Amigos, Blood Alcohol Content Unit's library.

Mister [redacted] has testified in court proceedings on numerous occasions and has been recognized as a court expert with regard to the subject of blood alcohol content and sample analysis (see transcribed interview page 3 of 5).

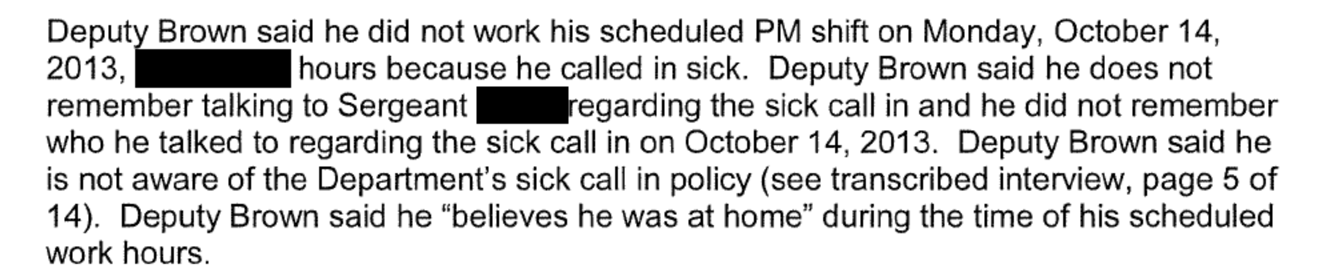
Mister [redacted] reviewed biographical information regarding Deputy Brown that was provided by Internal Affairs Bureau Investigator David Wessol (see Exhibit F). Mister [redacted] said if Deputy Brown had a blood alcohol content of .10 at 0428 hours, he would have had the equivalent of five standard alcoholic drinks in his system. A standard drink was defined by Mister [redacted] as a twelve ounce beer containing four percent alcohol, a four ounce glass of wine containing twelve percent alcohol or a one and one quarter ounce shot of distilled spirit containing forty percent alcohol (see transcribed interview, pages 3 & 4 of 5).

> Investigator's Note: During Deputy Brown's Internal Affairs Bureau interview, he claimed he consumed "a beer" at Hollywood "Tru" nightclub. Deputy Brown could not recall if he had any other alcoholic beverages that night but confirmed he had only one beer at the nightclub. Deputy Brown would not estimate the size of the beer he consumed. Please see Deputy Brown's transcribed interview, pages 10 & 11 of 14.

Mister [redacted] was asked what Deputy Brown's blood alcohol content could have been at 0210 hours (the time of the initial traffic stop) if he had his last drink at 0100 hours (the time Deputy Brown claims he drank his last drink; see Deputy Brown's transcribed interview, page 11 of 14). Under those circumstances, Deputy Brown's blood alcohol content could have been anywhere between .10 up to a .14 (see transcribed interview page 4 of 5).

Mister [redacted] was asked if it was possible for Deputy Brown to have a blood alcohol content of .10, three hours and twenty-eight minutes after consuming one beer. Criminalist [redacted] said it would be impossible for a male weighing 205 pounds to get to blood alcohol content of .10 after consuming only one beer (see transcribed interview, page 4 of 5).

Subject Deputy Lovell Brown
Deputy Brown was interviewed on March 13, 2014 at 1010 hours by Internal Affairs Bureau Investigators David Wessol and John Adams. The interview was conducted at Internal Affairs Bureau Offices, Interview Room C.


Deputy Brown said he did not work his scheduled PM shift on Monday, October 14, 2013, [redacted] hours because he called in sick. Deputy Brown said he does not remember talking to Sergeant [redacted] regarding the sick call in and he did not remember who he talked to regarding the sick call in on October 14, 2013. Deputy Brown said he is not aware of the Department's sick call in policy (see transcribed interview, page 5 of 14). Deputy Brown said he "believes he was at home" during the time of his scheduled work hours.

Deputy Brown indicated he was stopped by Los Angeles Police Department on October 15, 2013. He identified himself as a Deputy Sheriff to the contacting Officers because he was taught to do that in the academy "because, I may have a weapon on me and that's something he needs to know at that time, cause he's on duty, so…" (see transcribed interview, page 6 of 14). Deputy Brown said he did not have a firearm on him when he was contacted by the Officers and his duty weapon was home. Deputy Brown said there were no firearms in the vehicle he was driving.

Deputy Brown was asked if he refused to participate in a field sobriety test. He said, "I didn't refuse. I asked, could there be a supervisor present from my Department and I wasn't allowed that at the time and I did that based off the fact that I, I didn't feel comfortable with the Officer." See transcribed interview page 7 of 14.

When referring to the Officer, not identified by name, Deputy Brown said he did not like the way he came off. The Officer did not make him feel comfortable because Deputy Brown identified himself as a Police Officer and that fact was ignored. The Officer never asked Deputy Brown if he had any weapons in the vehicle and was more concerned about the driving under the influence investigation rather than really trying to figure out what was going on (see transcribed interview page 7 of 14). Deputy Brown did not give any indication as to what he meant by, "What was going on."

Deputy Brown requested a supervisor from the Department but was told that would not be afforded to him. The Los Angeles Police Officer just told him that he was going to cooperate or was going to jail. A Los Angeles Police Supervisor responded to the scene and told Deputy Brown the same thing the Officer told him (see transcribed interview, page 8 of 14).

Deputy Brown said he was asked to participate in a field sobriety test but he was handcuffed at the time. Deputy Brown was asked if he refused to participate in the field sobriety test. He said, "No, I was handcuffed at the time." Deputy Brown was asked if he did a field sobriety test. He said no, he did not feel comfortable at the time. Deputy Brown, again was asked if he refused to participate in a field sobriety test. He replied, "I didn't, I didn't necessarily refuse, 'cause I told him I'm not refusing, I just said, can you get someone from my Department. And he took it as a refusal." Deputy Brown acknowledged he did not perform a field sobriety test but would not answer the question

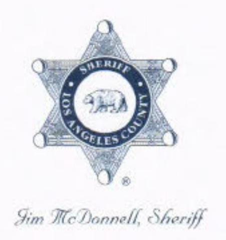
as to whether or not he refused. Deputy Brown said he continually asked if a Department supervisor could be present (see transcribed interview, pages 9 & 10 of 14).

On the night of October 14, 2013 leading into the early morning hours of October 15, 2013, Deputy Brown said he had one beer at the night club Hollywood Tru. When Deputy Brown was asked if he drank any alcohol at another location, he said "Not to my knowledge, I don't recall." When Deputy Brown was asked what size the beer he consumed was, he said he would rather not estimate. Deputy Brown said he drank his last beer at 0100 hours (see transcribed interview, page 11 of 14).

> Investigator's Note: During Deputy Brown's interview, he was asked if he had just one beer at the location (see transcribed interview page 11 of 14, line 7). Deputy Brown replied, "Yes Sir" (see transcribed interview, page 11 of 14, line 8). When Deputy Brown was asked about the time he consumed his beer, he replied, "I don't really recall the last drink I had but it had to be toward the end, maybe, let me see, 1:00 maybe, 1:00 AM." Deputy Brown again confirmed he had one beer at Hollywood Tru (see transcribed interview page 11 of 14, line 16, 17, 18 & 19).

Deputy Brown said he did not recall if he drove the vehicle to Hollywood Tru (see transcribed interview, page 12 of 14) but also indicated he did not feel impaired at all as a result of the alcohol he drank that night (see transcribed interview, page 14 of 14). Deputy Brown indicated his knowledge of the legal blood alcohol limit for driving a vehicle while impaired was .18 (see transcribed interview, page 13 of 14).

Deputy Brown said he was not working in an off duty security capacity on the night of October 14, 2013 leading into October 15, 2013. Deputy Brown also said he was not working in an off duty capacity in any way nor has he worked any outside employment since March 13, 2013 (see transcribed interview, page 13 of 14).



County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



December 22, 2014

Deputy Lovell Brown, Jr., #[redacted]

Dear Deputy Brown:

You are hereby notified that it is the intention of the Sheriff's Department to suspend you without pay from your position of Deputy Sheriff, Item No. 2708A, with this Department for a period of thirty (30) days.

An investigation under IAB File Number 2343020, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/030.10, Obedience to Laws, Regulations and Orders [as it pertains to 22350 C.V.C., Unsafe Speed, and/or 21685 a C.V.C., Unsafe Lane Change, 23152 (a) C.V.C., Driving Under the Influence of Alcohol, and/or 23152 (b) C.V.C., Driving Under the Influence of Alcohol, Blood Alcohol Concentration Greater than .08 percent] on or about October 15, 2013, you violated state traffic safety laws while driving a vehicle while under the influence of alcohol; and/or brought discredit to yourself and the Department when you were arrested as evidenced by, but not limited to:

    a. being observed by Los Angeles Police Department personnel driving a vehicle with illegal tint on the windows and traveling at an unsafe speed, 55 miles per hour in a zone where the posted speed limit was 35 miles per hour, while making at least three unsafe lane changes; and/or,

b. being contacted by Los Angeles Police Department personnel for a traffic violation investigation and displaying objective signs of alcohol intoxication and emitting the odor of an alcoholic beverage from your breath and person; and/or,

c. admitting to drinking at least one beer prior to operating a vehicle and being contacted by Los Angeles Police Department personnel for traffic violations; and/or,

d. being arrested for and charged with 23152 (a) CVC, Driving Under the Influence of Alcohol; and/or,

e. pleading guilty in the Los Angeles Metropolitan Superior Court, Department 74, on February 27, 2014, to violating 23109 C.V.C., Exhibition of Speed on a Highway; and/or,

f. being placed on probation for four years, and ordered to serve thirteen days in Los Angeles County Jail, to attend alcohol use related educational courses, pay restitution and fees; and/or,

g. having your driver licenses administratively suspended for one year by the Department of Motor Vehicles; and/or,

h. providing a breath sample for administrative review which revealed a blood alcohol concentration of .104 percent and .105 percent when tested.

2. That in violation of Manual of Policy and Procedures Sections 3-01/040.75, Failure to Make Statements and/or Making False Statements During Departmental Internal Investigations, on or about March 13, 2014, you failed to make full, complete and/or truthful statements regarding the amount of alcohol you consumed prior to being arrested by personnel from the Los Angeles Police Department on October 15, 2014, and/or your employment status as a security agent when you were operating [redacted] vehicle of on October 15, 2013, as evidenced by, but limited to:

a. stating, "from my knowledge, I had one beer," when asked how much alcoholic beverage did you drink on

October 14, 2014 or leading into October 15, 2014; and/or,

b. stating, "No," when asked if you were working an off duty job when you were stopped by personnel from the Los Angeles Police Department; and/or,

c. stating "No, sir," when asked if you worked in an off duty capacity in the past year, from March 13, 2013.

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet which are incorporated herein by reference.

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of the incident has been made by Department executives, including your Unit and Division Commanders.

You have the right to grieve this disciplinary action within ten (10) business days of receipt of this letter. Your grievance procedures may be found in your classification's negotiated Memorandum of Understanding.

Failure to respond to this Letter of Intent within ten (10) business days will be considered a waiver of your right to grieve and will result in the imposition of this discipline indicated herein.

At the time of service of this letter of intent, you were provided with a copy of the material on which the discipline is based. If you are unable to access the information provided in the enclosed CD, you may contact [redacted] of Internal Affairs Bureau, at (323) 890-5098, and arrange an appointment for assistance in this regard.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

JIM McDONNELL, SHERIFF

Original Signed

Joseph E. Dempsey, Captain
Men's Central Jail

JED:DLM:pmp

c: Advocacy Unit
Employee Relations Unit
Chief Eric G. Parra, Custody Services Division – General Population
Internal Affairs Bureau
(File # IAB 2343020)



CIVIL SERVICE COMMISSION

COUNTY OF LOS ANGELES

November 16, 2016

RECEIVED
NOV 1 8 2016
ADVOCACY UNIT

FINAL COMMISSION ACTION

Subject of Hearing: *Petition of **LOVELL BROWN** for a hearing on his thirty (30) day **suspension**, effective March 9, 2015, from the position of Deputy Sheriff, Sheriff's Department,* **Case No. 15-67**.

The Civil Service Commission, at its meeting held on November 9, 2016 approved findings in the above-entitled case. The petitioner's objections were overruled. Commissioner Hernandez was absent.

Since a copy of these findings has already been provided to all the parties, we have enclosed a copy of the signed formal order of the Commission for your records.

Anyone desiring to seek review of this decision by the Superior Court may do so under Section 1085 or 1094.6 of the Code of Civil Procedure as appropriate. An action under Section 1094.6 can only be commenced within 90 days of the decision.

Lawrence D. Crocker
Executive Director

Enclosure

c: Lovell Brown
Sherry Lawrence
Paul Patterson
George Larney

BEFORE THE CIVIL SERVICE COMMISSION OF THE

COUNTY OF LOS ANGELES

In the matter of the thirty (30) day ***suspension****, effective March 9, 2015, from the position of Deputy Sheriff, Sheriff's Department, of* **LOVELL BROWN** **(Case No. 15-67)**	ORDER OF THE CIVIL SERVICE COMMISSION

On November 9, 2016, the Civil Service Commission of the County of Los Angeles overruled the Petitioner's objections. The Commission adopted as its final decision, the findings, and recommendation of the Hearing Officer, George Larney, to sustain the Department. Commissioner Hernandez was absent.

Dated this 16th day of November, 2016.

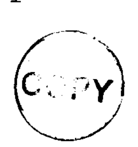
Z. GREG KAHWAJIAN, President

Absent
DENNIS F. HERNANDEZ, Member

NAOMI NIGHTINGALE, Member

STEVEN AFRIAT, Member

JOHN DONNER, Member



LOS ANGELES COUNTY CIVIL SERVICE COMMISSION

In The Matter of the Appeal

LOVELL C. BROWN Jr.

Appellant

COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT

Respondent

Case No. 15-67

PROPOSED FINDINGS OF FACTS
CONCLUSIONS OF LAW
AND RECOMMENDATIONS

APPEARANCES

For the Appellant:

SHERRY H. LAWRENCE
Attorney At Law
Green & Shinee, A.P.C.
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Suite 1000
Encino, California 91436

For the Respondent:

PAUL PATTERSON, SERGEANT
Department Advocate
L. A. County Sheriff's Department
4900 South Eastern Avenue
Suite 101
Commerce, California 90040

Hearing Officer:

GEORGE EDWARD LARNEY

Hearing Dates:

December 3 & 4, 2015
March 21, 2016
May 4, 2016

ISSUE

On **April 22, 2015,** the Commission defined the issues in this matter as:

- Are the allegations contained in the department's letter of February 26, 2015 true?
- If any or all are true, is the discipline appropriate?

EXHIBITS

Department Exhibits:

1.	Internal Affairs Bureau Investigative Report	September 18, 2014
2.	Computer Disc of IAB Investigative Report + Oral Recordings of Witness Interviews	
3.	Los Angeles Police Department EC/IR Accuracy And Calibration Report	October 15, 2013
4.	Appellant's Training Record – From 4-24-09 Through 11-8-12	April 28, 2015
5.	Sheriff's Department Guidelines For Discipline And Education-Based Alternatives	February 20, 2013
6.	Appellant's Statement of Qualifications	Withdrawn
7.	Sheriff's Department – Manual of Policy and Procedures (MPP) Sections	
	Section 3-01/030.10 Obedience To Laws, Regulations, and Orders (Revised)	May 22, 2011
	Section 3-01/030.05 General Behavior (Revised)	June 7, 2013
	Section 3-01/040.75 Failure To Make Statements And/Or Making False Statements During Departmental Internal Investigations	April 1, 1996
8.	Notice of Suspension	February 26, 2015

9. Statement of Qualifications – [redacted] Senior Criminalist (Department Witness) — January 22, 2016

Appellant Exhibits:

A. Appellant's Personnel Records

Report on Probationer	March 20, 2008 – December 16, 2008
Report on Probationer	April 24, 2009 – April 23, 2010
Performance Evaluation	April 24, 2010 – April 23, 2011
Performance Evaluation	April 24, 2011 – April 23, 2012
Performance Evaluation	April 24, 2012 – April 23, 2013
Performance Evaluation	April 24, 2013 – April 23, 2014

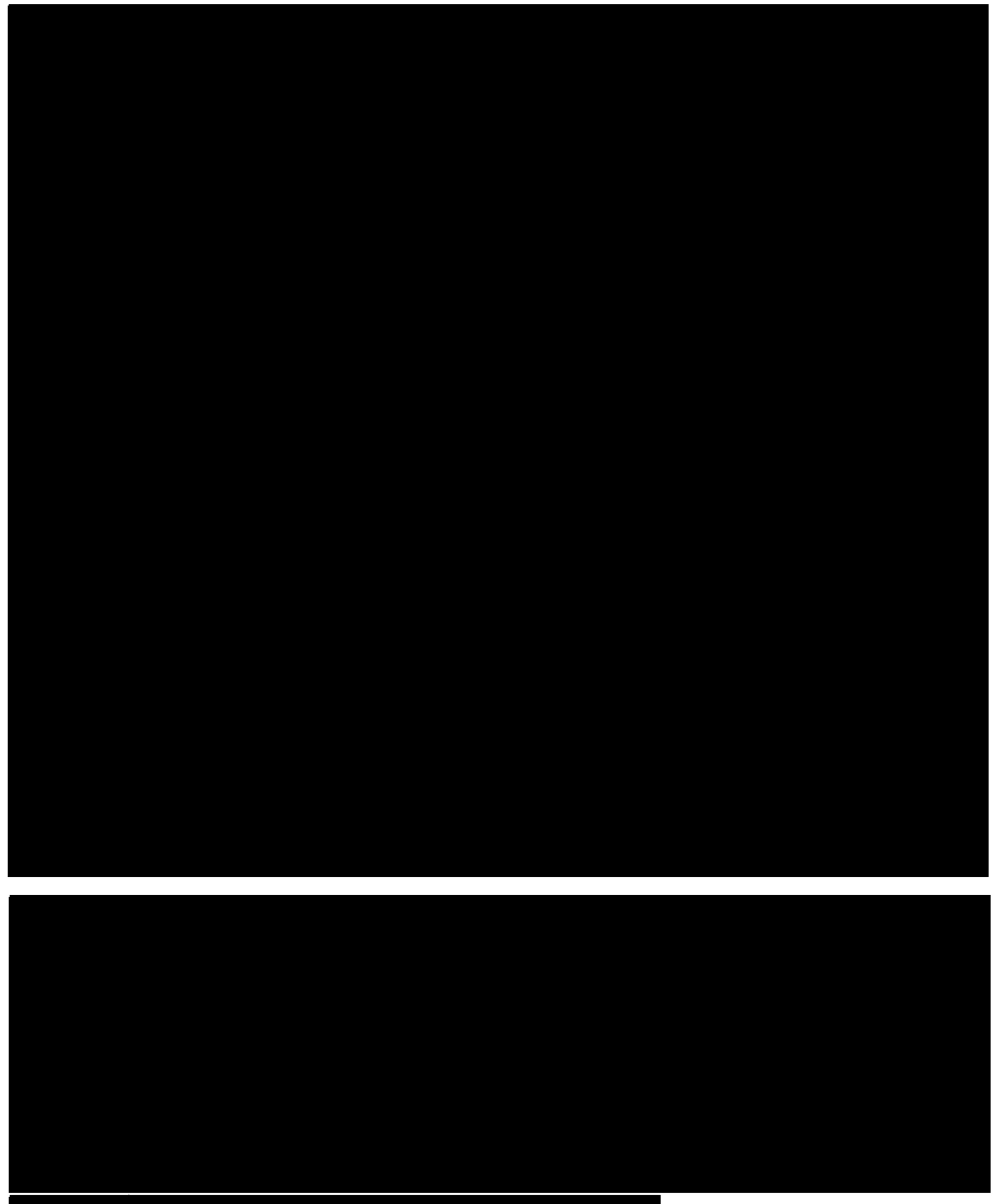
B. Guidelines for Discipline Page — Withdrawn

C. Personnel Administrative Investigation Check List (Revised) — October 17, 2005

D. Request For IAB Investigation And/Or Criminal Monitor — October 15, 2013

BACKGROUND

Lovell Brown hereinafter Appellant was hired by the Sheriff's Department sometime in December, 2007. [redacted]



[redacted] Notwithstanding having received this high level rating, the incident that eventually resulted in the subject 30

days disciplinary suspension without pay under review here occurred on October 15, 2013 falling within this twelve (12) month rating period.

On the incident date of October 15, 2013, Appellant was arrested and charged with Driving Under the Influence (DUI) of alcohol. [1] Subsequently, Appellant entered into a plea agreement on the lesser charge of "exhibition of speed on a highway" in operating a vehicle for which he was convicted. [2] Appellant was placed on summary probation for a period of 48 months, fined a total monetary sum of $1,864.00, ordered by the Court to perform ten (10) days of community labor and to enroll, participate in, and successfully complete a 3-month licensed first-offender alcohol and other drug education and counseling program. A Department of Motor Vehicles administrative review resulted in a one (1) year suspension of his driving privileges. [3] Additionally, the Sheriff's Department, hereinafter the Department, initiated an administrative investigation regarding the matter of Appellant's arrest for DUI. Said investigation was conducted by the Internal Affairs Bureau commencing November 5, 2013, the date the case was assigned to Investigator Sergeant David Wessol, and a Summary of the Investigation Report was completed and submitted for Review on September 16, 2014. In turn, Captain Alicia Ault of IAB forwarded the completed Administrative Investigation Report to Captain Joseph Dempsey, Men's Central Jail for his review requesting he send his violations of the Manual of Policy and Procedures (MPP), if any, through his division to IAB for final disposition and intent for discipline, if warranted. Ault informed Dempsey his review and findings needed to be completed by the one (1) year statute date of February 26, 2015. The Department alleges that in the course of its administrative investigation Appellant provided incomplete, false or untruthful statements regarding the number of alcoholic beverages he consumed. Appellant also provided incomplete, false

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[1] A Misdemeanor in violation of Vehicle Code, 231152(a) V,C.

[2] As part of the plea agreement, the Court approved the agreement and dismissed the DUI charge.

[3] The Court among other advisories warned Appellant not to drive a motor vehicle without a valid driver's license in his possession. It is noted that the one (1) year suspension commenced April 4, 2014 ending April 4, 2015. It is further noted that the April 4, 2014 date fell within the last three (3) weeks of the 2013-2014 Performance Evaluation rating period. The suspension of Appellant's driver's license for the year was without exception meaning it did not allow him to operate a motor vehicle during the course of his employment or while traveling to and from place of employment.

or untruthful statements regarding his work status while off-duty on the night of his arrest, and whether he had previously worked while off-duty within the previous year.

On the deadline date of February 26, 2015, the Department issued Appellant written notice of suspension without pay for a period of thirty (30) days effective March 9, 2015 through April 7, 2015. [4] This notice apprised Appellant that pursuant to the IAB administrative investigation and his own statements he was being charged with the following violations of the Department's Manual of Policy and Procedures (MPP):

> **Section 3-01/030.05 General Behavior.** *A member shall not act or behave while on or off duty in such a manner as to bring discredit upon himself or the Department.*
>
> *Members' arrests and/or referrals for prosecution are an embarrassment to the Department and bring discredit upon the member and the Department regardless of whether a criminal case is filed and/or ultimately results in a conviction or plea agreement.*
>
> *Members who are publicly intoxicated to the extent their recollection about an allegation of misconduct is affected have brought discredit upon themselves and/or the Department.*
>
> **Section 3-01/030.10 Obedience To Laws, Regulations, And Orders.**
>
> a) *Members shall not willfully violate any federal statute, state law or local ordinance,*
> b) *Members shall conform to and abide by the following:*
>   - *Charter of Los Angeles*
>   - *Los Angeles County Code*
>   - *Rules of the Department of Human Resources,*

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[4] The Hearing Officer notes that this 30 days period fell within the 2014-2015 Performance Evaluation period. More precisely, the ending date of this suspension was just sixteen (16) days shy of the completion of Appellant's twelve (12) month Performance Evaluation rating period. The Hearing Officer further notes that it is unknown whether this disciplinary suspension marred Appellant's history of receiving the second highest rating of "Very Good" for the prior five (5) consecutive annual Performance Evaluations as his 2014-2015 Performance Evaluation was not submitted into this evidentiary record.

e) Members, who violate any rules, regulations, of policies of the Department or the County, shall be subject to disciplinary action. The commission or omission of any other act contrary to good order and discipline shall also be the subject of disciplinary action.

*f) * * *. According to the nature of the offense and in conformance with the rules of the Department of Human Resources, disciplinary action may result and may include, but is not limited to, the following:*

- *A reprimand (written)*
- *Suspension without pay*
- *Reduction in rank*
- *Dismissal from the Department.*

Section 3-01/040.75 Failure To Make Statements And/Or Making False Statements During Departmental Internal Investigations.

If requested to make a statement in the course of an official Department internal investigation, members shall make full, complete and truthful statements.

Failure or refusal to make statements, or making false statements during Department internal investigations, may result in disciplinary action.

EVIDENCE

At 11:30 a.m. on the morning of October 14, 2013, Appellant called in to work, spoke with Watch Sergeant [redacted] and reported off from his scheduled 2:00 to 10:00 p.m. shift, indicating he was sick. [5] [redacted] apprised Appellant his reporting off from work that day was in conjunction with his regular day off and that it was his fourteenth (14th) sick call-in in the past twelve (12) months.

[5] The Hearing Officer notes that October 14, 2013 was a Monday and Columbus Day, a holiday.

Notwithstanding having reported off from work sick for his shift at the Men's Central Jail that ended at 10:00 p.m., at some time later that evening, Appellant, feeling slightly better throughout the day, went with friends to socialize at two nightclubs one of which was the nightclub TRU. At or about 2:10 a.m. the morning of October 15, 2013, Los Angeles Police Officers, [redacted] assigned to the Department's West Traffic Division, at the time specifically assigned to the Hollywood Area in Car Traffic Enforcement and [redacted] Patrol Officer I, a newly transferred officer to the Traffic Division in training at the time and partner of [redacted] for that morning only, observed a 2005 black Bentley automobile on Hollywood Boulevard traveling West bound at a speed of 55 to 60 miles per hour (mph) in a zone with a posted speed limit of 35 mph. In addition to speeding, the driver of the car, later identified as the Appellant, made multiple lane changes, straddled lanes, weaved the vehicle in and out of traffic passing other vehicles on the roadway and going through multiple intersections. Hollywood Boulevard described by Officer [redacted] as a high traffic area had multiple vehicles both parked and traveling at the time with pedestrians present on both sides of the roadway. Officer [redacted] activated his police vehicle's emergency equipment and conducted a traffic stop of the vehicle driven by Appellant for having committed several vehicle code violations.

Officer [redacted] approached the vehicle on the driver's side and made contact with Appellant who identified himself to [redacted] as a deputy sheriff. Appellant explained that identifying himself as a law enforcement officer to another law enforcement officer was a professional courtesy he was taught at the Academy as a means of informing that he might have a weapon in his possession. However, at the time he was stopped and contacted by [redacted] Appellant was not in possession of his duty firearm which he had left at home that evening nor were there any firearms present in the vehicle. At the time [redacted] stopped and made contact with him, there were three (3) other individuals in the car identified by Appellant as [redacted] owner of the vehicle, a lady friend of [redacted] name unknown to him, both of whom were seated in the back seat and [redacted] who was in the front passenger seat.

In his police report [redacted] wrote that when he made contact with Appellant he immediately smelled the strong odor of an alcoholic beverage emitting from the vehicle, then observed Appellant and noticed his eyes were bloodshot and watery and detected a strong odor of an alcoholic beverage emitting from his breath. [redacted] then noticed Appellant's speech seemed to be slurred and, at that point asked Appellant for his driver's license, registration of the vehicle and proof of insurance. [redacted] observed Appellant's slow motor skills as he fumbled to retrieve the documents he requested. Upon obtaining Appellant's driver's license, he asked Appellant to step outside the vehicle, directed him to the sidewalk whereupon he observed Appellant's unsteady gait as he walked.

At the sidewalk, [redacted] explained to Appellant the reason for making the traffic stop but notwithstanding the explanation Appellant seemed confused as he repeatedly kept asking him why he had been pulled over and [redacted] then repeated the reason. [redacted] asked Appellant to spit out his gum and inquired of Appellant how much had he had to drink. At first Appellant answered he had had nothing to drink but then stated he had only one (1) beer. In his testimony, [redacted] related Appellant's first response to the query of how much he had to drink was from somewhat to nothing then to a little bit and finally one (1) drink. [redacted] next attempted to conduct a field sobriety test but Appellant declined to take the test until a supervisor from the Sheriff's Department was summoned to the scene. [6] As an alternative to Appellant's request, [redacted] summoned a supervisor from the West Traffic Division and a Sergeant [redacted] came to the scene and a supervisor from the Hollywood West Division, Sergeant [redacted] also responded and came to the scene. In the presence of both Sergeant [redacted] and [redacted] read Appellant the Field Sobriety Test Admonition but Appellant again declined to submit to the test. Sergeant [redacted] then offered Appellant the opportunity to use the Preliminary Alcohol Screening (PAS) device but Appellant declined to use this device as well.

[redacted] testified that Appellant was uncooperative at the scene and that to prevent any escalation of such behavior taking into account Appellant's physical stature, height 6

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[6] [redacted] asserted in testimony he is not obligated nor is it LAPD's practice in a driving under the influence investigation to wait for someone's supervisor, or for that matter any other person to respond to the scene of a criminal investigation in order to complete the investigation.

feet, 2 inches tall and weighing 205 pounds, he handcuffed Appellant. Additionally, based on his training in the subject of DUI drivers, his observation of Appellant's various physical signs of being under the influence of alcohol, and the fact that on average over his eighteen (18) years with the L.A. Police Department he made around one hundred (100) DUI arrests each year, [redacted] placed Appellant under arrest for Misdemeanor DUI and transported him to the Hollywood Station. At the Station and in the presence of Sergeant [redacted] read to Appellant the Chemical Test Admonition, meaning giving a blood sample which Appellant refused to do. [redacted] noted that either Sergeant [redacted] or one of the other supervisors at the Hollywood Station contacted someone at the Sheriff's Department to inform that Appellant was in their custody and was requesting that a supervisor from the Department be summoned to the Station. Subsequently, a Captain Daniel Dyer responded and came to the Hollywood Station. Appellant related that by the time Captain Dyer showed up at the Hollywood Station, he had already been booked and at the station for two (2) hours.

Upon his arrival, Dyer ordered Appellant to submit to the breath test and Appellant complied. It was Officer [redacted] who administered the breath test using the Intox EC/IR-II breath testing instrument. [7] The record evidence reflects the test was administered three (3) times within the recommended lapse of time from each other that yielded two (2) successful results. [8] The first test yielded a breath alcohol concentration level in Appellant's system of 0.104 and the second test a breath alcohol concentration level of 0.105. Both test results exceed the legal limit for operating a motor vehicle of 0.08. Senior Criminalist [redacted] employed by the LAPD's Crime Lab since 2005 and qualified as an expert witness for the purpose of this appeal hearing testified, based on sufficient biological information of Appellant, to make theoretical calculations on his blood alcohol content given the results of his two (2) breath alcohol concentration levels of 0.104 and 0.105 measured at 4:28 a.m. two and a half (2½) hours after he had been arrested. Apodaca asserted according to his calculation based also on

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[7] According to the record evidence, Officer [redacted] is among numerous LAPD officers trained and qualified as an EC/IR Operator (Dept.Ex.3). [redacted] conceded in his testimony that the only thing he knows about the EC/IR is that the EC is a designation for electrochemical and the IR is a designation for infrared.

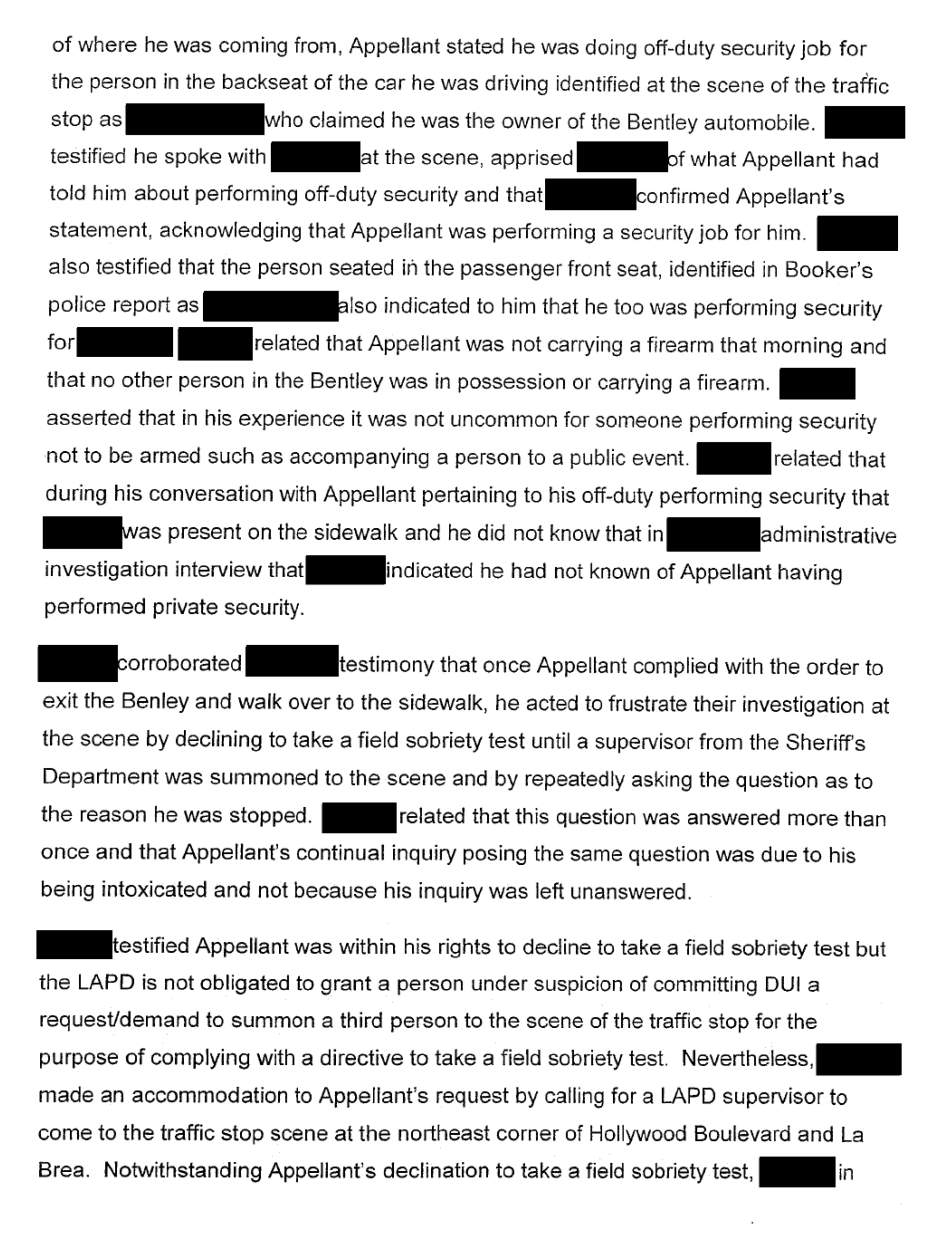
[8] [redacted] related the intervening duration of time between blowing into the breath testing instrument is two (2) minutes.

Appellant's height and weight that at the time his breath alcohol concentration levels were tested, he would have consumed just over five (5) standard drinks. [redacted] explained that five (5) standard drinks could consist of a twelve (12) ounce beer containing four percent (4%) alcohol or a four (4) ounce glass of wine containing twelve percent (12%) alcohol or a one-and-a- quarter (1 ¼) ounce shot of a distilled spirit containing forty percent (40%) alcohol. [redacted] testified it would be impossible for a male (read Appellant) weighing 205 pounds to have a breath alcohol concentration of a .10 by having consumed only one (1) drink. Asked if he could calculate what Appellant's breath alcohol concentration would have been two (2) hours earlier at the time of his arrest, [redacted] indicated he could do that based on the time Appellant consumed his last alcoholic drink. Assuming Appellant imbibed his last drink at 1:00 a.m. and assuming a dissipation rate for the average person of .02 each hour, and keeping the same metrics applied in his initial calculation, that is height and weight of Appellant, [redacted] calculated Appellant would have consumed just under eight (8) standard drinks prior to his being arrested. [9]

Officer [redacted] who was partnered with [redacted] the morning of October 15, 2013 testified that after they made the traffic stop on Appellant, [redacted] left the police cruiser to make contact with Appellant and he remained in the front passenger seat for the purpose of providing cover for [redacted] that is, looking out for [redacted] safety. When [redacted] ordered Appellant to exit the vehicle and walk to the sidewalk, [redacted] exited the police cruiser and made contact with Appellant. [redacted] related that Appellant was dressed in casual clothes, that he noticed the odor of alcohol emitting from Appellant's breath and that his eyes were bloodshot and watery. Based on his personal and professional knowledge, [redacted] concluded given his observation of Appellant that Appellant was intoxicated. [redacted] testified he and Appellant engaged in conversation the duration of which was approximately ten (10) minutes. [redacted] related he asked Appellant a number of questions such as, where he was coming from, what was he doing, and why was he driving so fast. [redacted] maintained that in answer to the question

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[9] In assuming the standard of an average person, said standard does not include persons who are deemed to be alcoholics nor include persons who almost never consume alcoholic beverages. [redacted] explained the dissipation rate measures the rate at which the liver breaks down alcohol over time.



of where he was coming from, Appellant stated he was doing off-duty security job for the person in the backseat of the car he was driving identified at the scene of the traffic stop as [redacted] who claimed he was the owner of the Bentley automobile. [redacted] testified he spoke with [redacted] at the scene, apprised [redacted] of what Appellant had told him about performing off-duty security and that [redacted] confirmed Appellant's statement, acknowledging that Appellant was performing a security job for him. [redacted] also testified that the person seated in the passenger front seat, identified in Booker's police report as [redacted] also indicated to him that he too was performing security for [redacted] [redacted] related that Appellant was not carrying a firearm that morning and that no other person in the Bentley was in possession or carrying a firearm. [redacted] asserted that in his experience it was not uncommon for someone performing security not to be armed such as accompanying a person to a public event. [redacted] related that during his conversation with Appellant pertaining to his off-duty performing security that [redacted] was present on the sidewalk and he did not know that in [redacted] administrative investigation interview that [redacted] indicated he had not known of Appellant having performed private security.

[redacted] corroborated [redacted] testimony that once Appellant complied with the order to exit the Benley and walk over to the sidewalk, he acted to frustrate their investigation at the scene by declining to take a field sobriety test until a supervisor from the Sheriff's Department was summoned to the scene and by repeatedly asking the question as to the reason he was stopped. [redacted] related that this question was answered more than once and that Appellant's continual inquiry posing the same question was due to his being intoxicated and not because his inquiry was left unanswered.

[redacted] testified Appellant was within his rights to decline to take a field sobriety test but the LAPD is not obligated to grant a person under suspicion of committing DUI a request/demand to summon a third person to the scene of the traffic stop for the purpose of complying with a directive to take a field sobriety test. Nevertheless, [redacted] made an accommodation to Appellant's request by calling for a LAPD supervisor to come to the traffic stop scene at the northeast corner of Hollywood Boulevard and La Brea. Notwithstanding Appellant's declination to take a field sobriety test, [redacted] in

agreement with [redacted] determination Appellant exhibited the objective physical signs of being intoxicated and having operated the Bentley vehicle at a speed significantly exceeding the posted speed limit, constituted grounds to arrest Appellant at the scene for commission of DUI. [redacted] testified the decision to handcuff Appellant was made after he declined to take the field sobriety test and while waiting the twenty (20) minutes for an LAPD supervisor to arrive at the scene. [redacted] testified that he was the officer who handcuffed Appellant.

The record evidence reflects the Department became aware of Appellant's arrest for Misdemeanor DUI on October 15, 2013, the very day of his arrest. [10] On November 5, 2013 the Department opened an IAB Administrative Investigation into the incident involving the arrest of Appellant and assigned Sergeant David Wessol as Investigator of the case, File Number IV 2343020. From the date of his assignment up to March 27, 2014, Sgt. Wessol engaged in preliminary work assembling documents, arranging for in-person interviews of those with knowledge of the incident in question and intermittently checking the Metro Court to determine the date Appellant was scheduled to appear for trial. On February 27, 2014 Appellant appeared in court, entered into a plea agreement whereby the Misdemeanor DUI charge was dismissed and Appellant pleaded guilty to and was convicted of the lesser charged offense of "Exhibition of Speed on a Highway. Following Department procedure of waiting for court disposition of Appellant's case, the Department then initiated its IAB Administrative Investigation of Appellant's conduct on March 27, 2014. Said investigation in the main consisted of in-person interviews of Sergeant [redacted] of the Department, LAPD Officers [redacted] and [redacted] Criminalist [redacted] and Appellant.

In his interview, Sergeant [redacted] attested to the fact he was the Watch Sergeant who took Appellant's call-in sick call on October 14, 2013; specifically Appellant was calling off from his scheduled shift that day from 2:00 pm to 10:00 pm. [redacted] was not called as a witness in this appeal hearing whereas, all other persons interviewed for the IAB

[10] This occurred as a result of Appellant declining to submit to alcohol testing unless and until a Sheriff's supervisor was present to witness the testing. Captain Daniel Dyer was informed by LAPD Appellant had been arrested and showed up at the Hollywood Station two (2) hours after Appellant had been taken into custody at which time he ordered Appellant to submit to a breath test. As noted elsewhere above, Officer [redacted] conducted the breath test and obtained the required two (2) test results.

Administrative Investigation appeared and testified at said hearing. Said testimony rendered by these other three (3) witnesses as referenced and detailed above is consistent with what they attested to during their IAB in-person interviews.

In his IAB interview, Appellant confirmed he had called off sick from his scheduled 2:00 pm to 10:00 pm shift at the Men's Central Jail on October 14, 2013. Appellant was unable to confirm that the person he spoke with in calling off from work was Sergeant [redacted] or that [redacted] had informed him that due to the frequency of such call-ins attributed to being sick in the prior twelve (12) months, the number being fourteen (14), that he was going to be placed on a call-in contract meaning that subsequent sick call-ins would require he bring in a doctor's note to substantiate he was, in fact, sick. Appellant admitted to not being familiar with the Department's call-in policy. [11] Appellant asserted he was home during the eight (8) hours of his scheduled shift on October 14, 2013. Appellant acknowledged he was driving a black Bentley automobile proceeding on Hollywood Boulevard and that about 2:10 am on October 15, 2013, he was subject to a traffic stop effected by the Los Angeles Police. Appellant admitted to identifying himself to the Police Officer who made contact with him (Officer [redacted] as a Sheriff's Deputy and explained the reason for doing so was as a professional courtesy to alert him to the fact he might have a weapon on him. Appellant noted this professional courtesy was something he learned while training at the Academy. Appellant attested to the fact that he was not armed at the time, that he had left his duty firearm at home and that there were no firearms present in the vehicle he was driving. Appellant noted there were three (3) other individuals present and seated in the Bentley, the two (2) in the backseat was the owner of the vehicle, [redacted] and his female companion (no name recalled) and [redacted] the person sitting in the front passenger seat. Appellant stated that in addition to his being requested to take a field sobriety test which he declined to take unless a Department supervisor was called to the scene of the traffic stop, he was "pretty sure" the other three (3) persons in the Bentley complied with a

[11] Appellant's representative attorney Audra Call objected to this line of questioning as she noted that Appellant was not informed the subject of his calling in off from work would be a subject of the IAB investigation. Call opined that since he had not been so informed about this line of questioning and he was being asked to answer such questions, that his rights under POBR (Police Officers' Bill of Rights) were being violated.

request for them to take a field sobriety test since the automobile was released to them to drive it from the scene.

Appellant explained his request to have a Department supervisor summoned to the scene was rejected and that he made the request because he did not feel "comfortable" with the Officer ([redacted]) who was to conduct the test. Appellant elaborated that he felt uncomfortable because of the Officer's demeanor as manifested by the fact he ([redacted]) completely ignored the fact he had identified himself as a Deputy Sheriff and that he never asked if there were any weapons in the vehicle as he was more concerned about the DUI. Appellant related that the Officer did not really say that much to him but that he ([redacted]) advised that either he was going to cooperate or he was going to jail. Appellant noted that though he was denied having a Department supervisor called to the scene, a LAPD supervisor was summoned and that when he arrived he also advised that either he cooperate, meaning taking the field sobriety test or he was going to jail. Appellant confirmed he was asked to submit to a field sobriety test and acknowledged he did not take such a test. Appellant maintained he had not refused to take the test just that he declined to take the test in the absence of a Department supervisor being called to the scene. Appellant acknowledged having consumed one (1) beer at the TRU nightclub in Hollywood that early morning of October 15, 2014 but was unable to recall the size of the beer, that is, the standard twelve (12) ounce bottle noting that he drank the beer from a glass. Appellant stated he did not really recall the last drink he consumed but estimated it might have been 1:00 am. Appellant acknowledged that Captain Dyer from the Sheriff's Department came to the Hollywood Station two (2) hours after his arrest and being transported to the Station and that Dyer ordered him to take a breath test to determine his blood alcohol content and that he complied with the order. When asked if he knew what the legal blood alcohol limit was for driving, Appellant answered, .18. [12] Appellant denied he was working in an off-duty security capacity the night of October 14, 2014 continuing into the morning of October 15, 2014. Appellant further denied having worked in an off-duty security capacity anytime that past year from March 13, 2013 going forward. Appellant averred he had

[12] The Hearing Officer notes this was an incorrect answer as the limit is .08.

no idea why passengers in the Bentley indicated to the LAPD Officers at the scene of the traffic stop that he had worked security for them. Appellant asserted he was not paid for driving the Bentley. Appellant further asserted he did not feel at all impaired to drive that morning.

In his testimony at this appeal hearing, Appellant related that when he called in sick to call off from his shift on October 14, 2013, he was taking medication, recalling it was the cough medicine Robitussin and that he was not eating as he normally would. Appellant testified that as he was feeling better the evening of October 14
, 2013 he went out with friends to socialize. Appellant began the evening out at his friend's [redacted] house and related that at the house there was drinking of alcohol but could not recall exactly what alcohol was being consumed nor could he recall that he imbibed alcohol at [redacted] house. Later, he and friends, [redacted], [redacted] and [redacted] female companion left the house and went to socialize at the nightclub TRU.[13] Appellant acknowledged that he was the one who drove to the nightclub. Appellant estimated he and his friends were at TRU for between an hour and an hour and a half. Appellant related that he and his three friends sat at a table at TRU and that the group ordered drinks but because of the music being played he was unable to focus on any one particular person at the table to determine if everyone at the table drank. Appellant was unable to recall whether he paid for the drinks. Though he could not recall how many alcohol drinks he consumed that night he remembered that at TRU he consumed his last drink which was a beer at about 1:30 am. Under cross-examination, Appellant clarified his testimony on this point by stating he was not saying that his last beer was the only beer he consumed while at the nightclub. However, in his IAB interview, he was asked by Sergeant Wessol how much alcoholic beverage he had to drink on October 14th leading into October 15th and Appellant answered "from my knowledge, I had a beer". In explanation of this response, Appellant related he was confused as to the question he was being asked by Wessol, maintaining it was a compound question he was being asked, that is, whether Wessol was inquiring as to the

[13] Appellant explained that he met Harrison through mutual friends but that he first met [redacted] about eight (8) to nine (9) years ago when they were co-workers at Home Depot just before he was hired by the Sheriff's Department. At present, Appellant believes [redacted] works as a stocker for WinCo the supermarket. Appellant testified he does not know what work [redacted] does either at the time of the incident or even at the present time.

number of all drinks he had consumed or as to the last drink he had consumed that evening/morning. Appellant asserted his answer of one (1) beer was addressed to the latter part of the question. Appellant related he had not been told of the results of the breath test the night the test was administered at the Station but was informed of the results sometime later after he hired a personal attorney to represent him. When asked on cross-examination if the two (2) test results of .104 and .105 respectively was consistent with having consumed one (1) beer, given his training and experience, he declined to speculate what his blood alcohol level should have been.

As he responded in his IAB interview, he asserted he has not performed off-duty security at any time and has no idea why other persons in the Bentley would have indicated to the LAPD officers that he was performing off-duty security that evening/morning. Appellant maintained that when he was asked by the Officer ([redacted]) to produce the car's registration and insurance documents, he had no idea where his friend ([redacted] the owner of the vehicle) kept those documents. Appellant admitted to the charge of exhibition speeding for which he was convicted and maintained that was the one and only time he has engaged in such conduct. Moreover, Appellant was contrite stating he regretted speeding that night. Appellant conceded he was arrested for DUI but he was not convicted on that charge.

Appellant explained he asked Officer [redacted] for a watch commander from the Department to be summoned to the scene of the traffic stop for two (2) reasons, to wit, 1) to satisfy the obligation pursuant to the Department's policies that the Department be notified of his arrest; and 2) that if a watch commander was present, the Department would take charge of the situation as opposed to the LAPD taking charge of the situation. However, under cross-examination, Appellant proffered another reason explaining that [redacted] kept asking him questions pertaining to how many drinks he had consumed and he kept telling him in response the situation was all new to him, that he had never before been in trouble and because this same dialogue was continuing and going nowhere, it impelled him to request the presence of a supervisor to speak with. . Contrary to what [redacted] testified that Appellant kept asking him as to the reason why he had been stopped, Appellant was unable to recall that he repeatedly or continually

asked this question of [redacted] Appellant explained he was both confused and scared as he had never before been in such a situation and he just wanted to know what was going to happen particularly what was going to happen with his job. As to [redacted] observation of his physical signs of being under the influence, Appellant explained his eyes may have been red and watery due to the fact he was under the weather earlier the previous day. Appellant denied in his testimony that in walking to the sidewalk as requested by [redacted] that he staggered or exhibited an unsteady gait. Under cross-examination however, Appellant admitted that he really did not pay any attention to the way he was walking but asserted he was walking normally. Appellant reiterated in his testimony what he had indicated in his IAB interview that he declined to take the field sobriety test because of feeling uncomfortable with [redacted] given [redacted] demeanor toward him, particularly that [redacted] just dismissed the fact he was a deputy sheriff and a law enforcement office like he was. However, Appellant maintained contrary to [redacted] assessment he was uncooperative that he was both cooperative and respectful of [redacted] and of Officer [redacted] that aside from exercising his right to decline to take a field sobriety test he did not resist being handcuffed nor did he utter any profanity or display any anger toward either Officer. Appellant averred he had never before met or known [redacted] prior to this incident and therefore acknowledged that [redacted] would have no reason to lie about the circumstances surrounding his arrest. Appellant testified that when Captain Dyer came to the Hollywood Station and ordered him to take a breath test he complied with the order notwithstanding in his opinion the person administering the test ([redacted]) had not observed him for the mandatory fifteen (15) minutes prior to taking the test.[14]

As to the conversation he had with Officer [redacted] Appellant testified that [redacted] was telling him that an LAPD supervisor had been called to the scene and would be arriving pretty soon and to hold on until the supervisor got there. Appellant asserted he does not recall telling [redacted] he was on the job working, that he was performing security. As he had in his IAB interview, Appellant maintained he has never worked security in an

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[14] As was noted at the hearing, Department Representative Patterson objected to this testimony by Appellant on grounds that the mandatory observation of fifteen (15) minutes is performed by the administrator of the breath test and therefore is not within the purview of the Appellant and therefore his opinion as to whether or not he had been observed for the fifteen (15) minute period is irrelevant.

off-duty capacity and does not know where that statement would come from. Appellant related that like in [redacted] case, since [redacted] is a law enforcement officer as he is, [redacted] would have no reason to lie about the circumstances surrounding his having been the object of a traffic stop.

Appellant acknowledged under recross-examination that his perception of the whole event of his arrest including his perception of how [redacted] treated him may have been altered as a result of his level of intoxication the morning of October 15, 2013.

In concluding his testimony on both direct and redirect examination, Appellant noted that before this incident and subsequent to this incident, he had never been in any trouble with the Department. Appellant expressed he is very proud to be a Deputy Sheriff, that he takes his job seriously, that he always tries to be a good role model to his peers, and never, in any way, does he wish to bring discredit upon the Department. Appellant claims to have learned his lesson with regard to drinking and driving and has not engaged in such behavior since the occurrence of this subject incident.

Over the objection of the Department, Appellant called as a witness in its defense, Deputy Sheriff James Mee testifying as an expert on the issue of DUI. According to Counsel for Appellant Sherry Lawrence, Mee has testified numerous times as an expert witness on DUIs in Superior Court. Counsel Lawrence apprised that Mee was asked by the Department to analyze three thousand (3,000) DUI reports submitted by deputy sheriffs. None of the reports Mee analyzed were reports submitted in DUI cases by LAPD officers. Counsel Lawrence explained prior to Mee's testimony that the purpose of calling him as a witness was not to refute the test results obtained from Appellant's breath test administered at the Hollywood Station or even challenge the calibration of the breath machine used to obtain the test results but, rather to question whether the mandatory pre-test observation period of fifteen (15) minutes was conducted and the required mandatory questions were posed to Appellant during those fifteen (15) minutes were actually asked Appellant. Additionally, Lawrence noted that Mee would testify to his findings based upon his analysis of the thousands of DUI reports he has read that deputies have a tendency to exaggerate the objective signs of intoxication such as, immediately smelling alcohol on the subject's breath when first making contact with the

subject in situations where the subject refuses to submit to a field sobriety test or chemical test.

The Hearing Officer permitted Mee to render testimony not knowing beforehand whether or not such testimony had any relevance since, in the final analysis Appellant entered into a plea agreement at trial whereby the Court dismissed the DUI charge and found Appellant guilty of the second charge of driving a vehicle at an excessive speed, or in other words speeding. In reviewing Mee's testimony, the Hearing Officer concurs in the several objections raised by the Department to said testimony and finds that under all the given circumstances, all of Mee's testimony is found to be irrelevant since Appellant when all is said and done was not convicted of committing a DUI.

Eric Parra, Division Chief of the Department's Custody Service Division General Population which oversees the operation of three (3) facilities including the Men's Central Jail where Appellant is assigned to work, was the final decision-maker in determining to assess Appellant the subject thirty (30) days disciplinary suspension. Parra related he first became aware of Appellant's situation when he received an initial briefing from Captain Dyer which he noted does not provide a lot of information. Subsequently, in his capacity as Division Chief, the entire IAB Administrative Investigation file is submitted to him for his review. Parra also noted that he met Appellant for the first time at the Skelly Hearing.

Parra testified he considered the following factors in determining the appropriate disciplinary action to be assessed Appellant:

- Officer [redacted] police report where [redacted] indicated Appellant was uncooperative;
- Based on a description of the vehicles on Hollywood Boulevard and the people on the Boulevard at the time Appellant was driving on the roadway, Parra concluded Appellant had operated the vehicle at an unreasonable speed;
- Parra looked at the narrative of [redacted] report to assess how [redacted] and [redacted] determined Appellant was under the influence of alcohol specifically their

statements and their firsthand observations of Appellant's level of intoxication and Appellant's overall demeanor;

- Parra conceded Appellant had the right to refuse to take the Field Sobriety Test at the scene of the traffic stop but noted Appellant did not have the right to demand of the LAPD officers to summon a Department Supervisor to the scene as a means of complying with the request to take the field sobriety test or, in the alternative to consent to being tested using a Preliminary Alcohol Screening (PAS) device.
- Booker's IAB interview wherein [redacted] described Appellant's conduct which led to the decision to handcuff Appellant and the determination by Officers [redacted] and [redacted] that Appellant was sufficiently intoxicated to not further drive the vehicle;
- Officer [redacted] IAB interview which raised the possibility that Appellant was engaged in a second employment situation in contradiction of a signed form dated March 13, 2013 wherein Appellant reported he was not engaged in any outside employment; and
- Appellant's IAB interview wherein Parra determined Appellant was evasive about the amount of his alcohol consumption and Appellant's breath test results which raised suspicion pertaining to the validity of Appellant's claim he only drank one (1) beer.

After reviewing the complete IAB Administrative Investigative Report, Parra then consulted the Department's Guidelines For Discipline to make a determination as to the assessment of appropriate discipline. As stated in the Guidelines, it is designed to assist supervisors, managers and executives in deciding when and how to impose discipline. The Guidelines also specifically address "Unacceptable Off-The-Job Conduct such as was involved in Appellant's case. The Guidelines state the following:

> *An employee can be subjected to discipline for off-duty incidents. Where an employee's off-the-job conduct is related to and impacts the Department's operation or the employee's ability to perform competently, discipline up to and including discharge may be warranted.*

Off-the-job conduct may also be subject to discipline when it is deleterious to the Civil Service system or County Government without being specifically related to the job function or department operations. For example, and employee who cheats in a Civil Service examination or falsifies Civil Service examination applications is subject to disciplinary action up to and including discharge.

The Guidelines also address what should be the Appropriate Discipline to be assessed and under the disciplinary action of assessing a suspension without pay, the Guidelines state the following:

A suspension without pay, for disciplinary purposes , may not exceed 30 calendar days in length, and may not be used in conjunction with a reduction or bonus removal.

Based on the factors he derived from his review of the IAB Administrative Investigative Report in its entirety, Parra determined that Appellant had violated the following three (3) Sections of the Department's Manual of Policy and Procedures (MPP), to wit: (see also pp 6 & 7 of this Recommendation Report)

Section 3-01/030.05 General Behavior. *Of the possible ten (10) specific violations falling under this Section, Parra determined Appellant had violated "Conduct on or off duty which causes embarrassment to the Department". The range of discipline to be imposed for this specific violation is a Written Reprimand to Discharge.*

Section 3-01/030.10 Obedience to Laws, Regulations and Orders. *Of the possible twenty (20) specific violations falling under this Section, Parra determined Appellant had violated, "Off-duty drunk driving . . . : Belligerent/Uncooperative with law enforcement". The range of discipline to be imposed for this specific violation is 15 days Suspension to Discharge.*

Section 3-01/040.75 Failure To Make Statements And/Or Making False Statements During Departmental Internal Investigations. *The sole specific violation falling under this section reads as follows: "Knowingly giving untruthful*

or misleading statements during internal investigations". The range of discipline to be imposed for this specific violation is 25 days Suspension to Discharge.

Parra explained that after identifying the specific violations committed by Appellant and the range of discipline associated with each of the three (3) violations which warranted up to and including the ultimate disciplinary action of Discharge, he next took into consideration the factors of aggravation and mitigation. On the side of aggravating factors, Parra determined the following:

- **Lack of Cooperation**
- ***Unsafe Driving***
- ***Driving While Intoxicated***
- ***Untruthful Statements: 1) the amount of alcohol he consumed; and 2) refuting the allegation by Max Harrison and Dave Maxey he was working security for Harrison on the night of the incident.***

On the side of mitigating factors, Parra determined the following:

- **Prior Performance Evaluations** (see page 4 of this Recommendation Report)
- **Prior Disciplinary Record** (no prior discipline)
- **Discussion With Captain Joe Dempsey** (Appellant's superior at Men's Central Jail)

Parra testified that in weighing the above two (2) factors, he was leaning toward giving more weight to the aggravating factors and thus imposing discharge as the appropriate discipline to be assessed Appellant until he spoke with Captain Dempsey who expressed great support for Appellant recommending he be suspended for 30 days without pay on the basis he was confident that Appellant was going to learn from this incident and move on. Parra accepted Dempsey's input and, in turn, decided to impose the 30 days suspension without pay as constituting the appropriate discipline.

DICUSSION

At the outset, the Hearing Officer notes as did Appellant in its post-hearing brief that in the final analysis after Parra identified the specific Manual of Policy and Procedure (MPP), violations Appellant committed, the Department omitted from the Suspension letter dated February 26, 2015 the specific violation under Section 3-01.030.10 Obedience to Laws, Regulations and Orders of being "uncooperative with law enforcement". Under cross-examination Parra opined that this specific violation was covered under the General Behavior section, Section 3-01/030.05 which states, "Conduct on or off duty which causes embarrassment to the Department". Appellant asserts that if this were the case, then every infraction of the MPP committed by an employee could logically be claimed by the Department to fall under General Behavior. The Hearing Officer concurs in Appellant's position on this point since if Parra's view were to be accepted there would be no need for the remainder of the Guidelines To Discipline to exist, as any and all infractions of the MPP would be covered under the General Behavior section. Having noted this omission from the Letter of Suspension, the Hearing Officer does not deem said omission to constitute a fatal flaw in the application by the Department of assessing Appellant the discipline of a 30 days suspension without pay. While this omission would have weakened the Department's rationale for having imposed discharge as the appropriate quantum of discipline as Parra was wont to do prior to speaking with Captain Dempsey, nevertheless, bottom line, the Department opted instead to assess Appellant a 30 days suspension without pay. In effect, the loss by omission of the uncooperative charge against Appellant may have occurred by mistake, it nevertheless does not weaken the Department's rationale for having imposed a suspension of 30 days without pay as the two (2) remaining MPP violations call for discipline up to and including discharge. As noted in the Guidelines to Discipline, the maximum limit to imposing a disciplinary suspension is 30 days.

As also noted by Appellant's post-hearing brief and, in which the Hearing Officer is in concurrence, is that the most serious allegation against Appellant is for making false statements pertaining to the quantity of alcohol he consumed prior to being subject to the traffic stop at 2:10 am the morning of October 15, 2013 and the question of whether

or not as [redacted] confirmed to Officer [redacted] but Appellant denied, that Appellant was working for him and performing off-duty security. Of these two (2) alleged false statements, Parra deemed Appellant's non-responses to the multiple queries pertaining to the quantity of alcohol he consumed to be the more egregious.

The record evidence clearly establishes that at the very outset and throughout the unfolding events of his being stopped and questioned by Officer [redacted] regarding the quantity of alcohol he consumed beginning sometime in the late evening of October 14, 2013, and ending, according to the Appellant at about 1:00 am, the morning of October 15, 2013, Appellant, at every turn, continually frustrated the effort by Officers [redacted] and [redacted] to assess the degree to which he was intoxicated. This effort by Appellant immediately began when he declined to take the field sobriety test he was requested to take by Officer [redacted] by asserting he would take the field sobriety test if only Officers [redacted] and [redacted] accommodated his request/demand to summon to the scene of the incident a supervisor from the Department. Of the reasons Appellant proffered for his request the most telling is, in a flash of candor that exists nowhere else in his testimony, that he wanted a supervisor from the Department to be present in order for the Department to take charge of the situation and take it over from the LAPD. While it has been conceded it was Appellant's constitutional right to refuse to take the field sobriety test or for that matter to render a breath sample into the Preliminary Alcohol Screening (PAS) device at the scene of the incident, it was clearly established by the uncontested record evidence that Appellant possessed no due process right to request a Department supervisor be notified and summoned to the scene and the LAPD was under no obligation to accede and accommodate Appellant's request/demand as a condition precedent for taking the field sobriety test. In point of fact, by Department regulation the onus is on any employee of the Department, here the Appellant, whenever they run afoul of law enforcement to make notification to the Department of such circumstances no matter the specific reason for having been arrested. It is unclear whether requesting a third party to make such notification as Appellant attempted to do at the scene of the incident by predicating his taking a field sobriety test on a request to Officers [redacted] and [redacted] to summon a Department supervisor to the scene satisfies compliance with this Department regulation.

However, notwithstanding Appellant's withholding of an answer to the several queries as to the quantity of alcohol he had consumed prior to driving the Bentley vehicle, given [redacted] numerous encounters and arrests of persons suspected and charged with the commission of DUI due to alcohol over his eighteen (18) years with the LAPD, a record that surely matches the asserted number of such DUI arrests made by the proclaimed expert witness Deputy Sheriff James Mee, [redacted] was astute enough to make the call that Appellant was sufficiently intoxicated to prevent him from further driving the Bentley vehicle owned by [redacted] that morning. Interesting is the fact that the other three (3) individuals in the Bentley vehicle acceded to taking the field sobriety test at the incident scene and that either one (1) of these persons or all three (3) persons "passed" the test allowing Officer [redacted] to release the vehicle to be driven from the scene by one of those three (3) persons.

Aside from his request for a Department supervisor to be summoned to the scene of the incident, Appellant offered the excuse for declining the field sobriety test claiming he was confused as to the reason he had been stopped by the LAPD officers and he was scared because he had never before been in trouble with law enforcement. Yet, Appellant had the presence of mind to quickly remember what he had been taught at the Department's Academy at least about four (4) years earlier that when confronting another law enforcement officer, as a professional courtesy, he was to identify himself as also a law enforcement officer explaining the reason for doing so was to alert the other officer he might be carrying a firearm. The problem here is that the reason for identifying himself to Officer [redacted] as another law enforcement officer had nothing to do with carrying a firearm at that point in time because Appellant knew very well he had left his service revolver at home. It can be reasonably concluded that the one and only reason Appellant identified himself to [redacted] as another law enforcement officer is that Appellant was seeking special treatment from [redacted] a conclusion supported by Appellant's own testimony that [redacted] completely ignored his self identification and continued to ask him the question as to how much alcohol he had consumed which made Appellant not feel "comfortable" in [redacted] presence. It can also reasonably be concluded that [redacted] kept asking Appellant the question of how much alcohol had he

consumed because Appellant continued to evade giving [redacted] a clear and definitive answer and not because he did not understand what [redacted] was asking him about.

While Appellant had requested a Department supervisor be summoned to the scene of the incident for the reason specified above, when that did not happen Appellant apparently did not count on the LAPD informing the Department of his arrest once he was transported to the Hollywood Station and having Captain Dyer show up. This conclusion is supported by the fact that once at the station Dyer had to order Appellant to submit to yielding a breath sample on a machine operated by [redacted] a very different scenario than the one Appellant asserted at the scene of the incident that he would voluntarily submit to taking the field sobriety test if only Officers [redacted] and [redacted] would summon a Department supervisor to the scene. Further evidence that Appellant resisted submitting to a breathalyzer test unless ordered to do so is the fact that he had not voluntarily assented to submitting to such a breath test for the two (2) hours he had been at the station before Captain Dyer showed up. Additionally, as evidence Appellant was resistant to submitting to a breathalyzer test and had to be ordered to do so is the very fact that in these proceedings Appellant moved to have Deputy Mee testify in his defense, testimony all aimed at discrediting the test administered at the station not on the basis of the test results but rather on the basis of procedure. Specifically, that Appellant had not been observed for fifteen (15) minutes prior to taking the test and that during this fifteen (15) minute mandatory observance period he had not been asked the required mandatory questions. All Appellant's efforts to resist submitting to tests to yield results indicating his level of intoxication and his effort to then attempt to discredit the only results obtained to prove his level of intoxication add up to a concerted act to obfuscate the amount of alcohol he consumed prior to being traffic stopped by Officers [redacted] and [redacted] the early morning of October 15, 2013. However, the test results stand as is and constitutes evidence beyond any doubt that Appellant consumed more than a twelve (12) ounce bottle of beer for the entire period of time he was out socializing, first at Harrison's house the night of October 14, 2013 and later in the evening and into the early morning on October 15, 2013 at the nightclub TRU.

Appellant continued to obfuscate the obvious he had consumed a great deal of alcohol prior to being stopped by Officers [redacted] and [redacted] as reflected by the test results showing a blood alcohol content of .104 and .105 as compared to the legal limit of .08 for driving a motor vehicle when months later he was the subject of an IAB interview as part of the Department's Administrative Investigation. Appellant never gave a straight and honest answer to the question asked of him as to how much alcohol he had consumed prior to getting into the Bentley automobile and driving at 20 to 25 miles per hour above the posted speed limit on Hollywood Boulevard, a heavily traveled roadway and heavily populated by pedestrians. The un-refuted evidence proffered by Senior Criminalist [redacted] of the Department reveals that the test results referenced above would indicate that Appellant had consumed five (5) standard alcohol beverages and that if he had submitted to taking the Preliminary Alcohol Screening test at the scene of the incident, given the normal rate of alcohol dissipation in the blood stream, Appellant likely would have been determined to have consumed eight (8) standard alcohol beverages. In this regard, Appellant was wise to have entered into a plea agreement to have the Court dismiss the misdemeanor DUI charge, just another piece of evidence that Appellant knew very well he had consumed more than just one beer at the time he had been stopped for speeding by Officers [redacted] and [redacted] And even though he was intoxicated, somewhere in the recesses of his mind at the time he had a fair idea of how much alcohol he consumed that night and morning but was unwilling to divulge that information when asked multiple times to provide an answer starting with Officers [redacted] and [redacted] and ending with Sergeant Wessol who conducted his IAB Investigative Interview

As to the allegation Appellant's denial of working security on off-duty hours as outside employment constituted a false statement, the Hearing Officer is persuaded there is not sufficient evidence to support this allegation although there certainly are indications in the record evidence that this is the case. First and foremost is the sworn testimony by Officer [redacted] that Appellant himself volunteered the information to him that he was working security when he was stopped for speeding and that [redacted] obtained confirmation of said information from passengers [redacted] and [redacted]
Second is the fact that Appellant had accumulated a total of fourteen (14) calls off from

work over a period of the past twelve (12) months and that after the call off from work on October 14, 2013, the Department placed him on a status whereby future calls off from work had to be supported by bringing in a doctor's note for verification. The evidence that is lacking however in substantiation of [redacted] testimony, is proof obtained formally from any individual or entity that Appellant is employed by them to provide off-duty security. Lacking such proof, Appellant's written declaration submitted to the Department that he is not engaged in any outside employment must be accepted as the truth of the matter.

As to his having violated the MPP section on General Behavior, specifically, conduct on or off duty which causes embarrassment to the Department there can be no doubt that being arrested for commission of a misdemeanor DUI and for excessive speeding while operating a motor vehicle caused embarrassment to the Department and therefore subject to disciplinary action.

The last remaining issue pertains to the question of whether or not the discipline assessed Appellant of a 30 days suspension without pay constituted the appropriate quantum of discipline to be administered for the MPP violations cited in the February 26, 2015 Notice of Suspension. Most significant in taking into account the weighing of mitigating and aggravating factors to arrive at the proper determination is the fact that in this instant case Parra, the decision-maker went the extra mile by going beyond just reviewing and analyzing the written record evidence, primarily the IAB Administrative Investigation Report which is the norm and usual procedure followed, to speak to Captain Dempsey, Appellant's superior at the Men's Central Jail to seek his opinion regarding his view of Appellant's work performance and estimation of Appellant's character. Said conversation bore significantly in changing Parra's decision from imposing discharge as the commensurate disciplinary action to the subject 30 days suspension without pay recommended by Dempsey. As such, the Hearing Officer is not inclined, in any way, to modify the quantum of discipline imposed on Appellant under all the prevailing circumstances especially because Appellant, at no time, was willing to be forthcoming and candid in answering truthfully the multiple queries posed to him by

several law enforcement personnel as to how much alcohol he had consumed on the incident date in question.

FINDINGS OF FACTS

1. First hired by the Sheriff's Department, hereinafter the Department, sometime in December, 2007, [redacted]

2. Appellant subsequently attended the Sheriff Trainee program and successfully completed 720 hours of Academy Basic Training on April 24, 2009..

3 [redacted]

4. [redacted]

5. On the morning of October 14, 2013, Appellant called in sick and reported off work for his 2:00 to 10:00 pm scheduled shift. [redacted]

6. Sometime after 10:00 pm the evening of October 14, 2013, Appellant felt better and decided to go out and socialize with friends. Appellant and others first went to a friend's house where alcohol was served and following that visit, Appellant and three (3) friends entered a black Bentley automobile owned by [redacted] but driven by Appellant where they proceeded to the Hollywood nightclub, TRU. [redacted] a female companion of [redacted] and [redacted] were the three (3) friends of Appellant that were in the vehicle.

7. On or about 2:10 am the morning of October 15, 2013, seven (7) months into the last annual Performance Evaluation rating period submitted into the record evidence of this proceeding, Appellant was stopped by Officers of the Los Angeles Police Department (LAPD) for two (2) traffic code violations, to wit: 1) driving under the influence (DUI) of alcohol and 2) speeding beyond the posted speed limit, specifically charged with traveling 55 miles per hour in a 35 miles per hour zone. Appellant was in an off-duty status at the time of his arrest.
8. At the scene of the traffic stop at the intersection of Hollywood Boulevard and La Brea Street, Appellant identified himself as a Deputy Sheriff ostensibly as a "professional courtesy" which Appellant explained was something he was taught to do during Academy training whenever he encountered another law enforcement officer. Appellant's explanation for doing so was to alert the law enforcement officer to the fact that he might be in possession of a firearm. Appellant however had left his firearm at home that evening of October 14, 2013.
9. When contacted by the Police Officer on the driver side of the black Bentley vehicle after being stopped, the Officer ([redacted], smelled the odor of alcohol emanating from Appellant's breath and, as a result, Appellant was asked to exit the vehicle he was driving, proceed to the sidewalk and requested to take a Field Sobriety Test which he declined to take unless and until the Police contacted a Department supervisor and summon the supervisor to the scene.
10. Under no obligation to call a Department supervisor, the LAPD instead summoned a supervisor from the Los Angeles Police to the scene and two (2) of their supervisors responded and showed up. While waiting for the supervisors to come to the scene, the Officers handcuffed Appellant perceiving he was being uncooperative and due to his physical stature of being a 6'2" tall male.
11. While waiting for an LAPD supervisor to come to the scene of the traffic stop, the second officer ([redacted]), and Appellant engaged in conversation during which Appellant confided he was working that night as off-duty security. Officer [redacted] then spoke with [redacted] and [redacted] while they were still seated in the Bentley, [redacted] in the back seat with his female companion and [redacted] in the

front passenger seat, both of whom corroborated that Appellant at the time was performing off-duty security employed by [redacted]

12. Notwithstanding the presence of the LAPD supervisors, Appellant was asked again to submit to a Field Sobriety Test and again he declined to do so explaining he felt uncomfortable in the presence of the Officer [redacted] because he had completely ignored his having identified himself as a fellow law enforcement officer. Appellant was then asked to submit to a breathalyzer test which he also declined to do. Appellant also was asked repeatedly by the officers as to how much alcohol he had consumed prior to being stopped by them and Appellant, each time he was asked, evaded given them a definitive answer. Appellant was then arrested and transported to the Hollywood Police Station.
13. The Department was notified by the LAPD the early morning of October 15, 2013 of Appellant's arrest and that he was being held at their Hollywood Police Station. Appellant was booked for the two (2) vehicle code violations noted and was at the Police station for more than two (2) hours, when a Department supervisor, Captain Daniel Dyer showed up.
14. Captain Dyer then ordered Appellant to submit to a breath test and Appellant complied with the order.
15. As statutorily required, two (2) test results were obtained. The first test result was recorded as .104 and the second test result was recorded as .105. Both test results exceed the legal limit of blood alcohol of .08 for purposes of operating a motor vehicle.
16. On February 27, 2014, Appellant appeared in Metropolitan Superior Court for a jury trial on the two (2) charged vehicle code violations. While at court, Appellant opted to enter into a plea agreement whereby, the DUI charge was dismissed and Appellant was found guilty and convicted of the excessive speeding violation. Appellant was placed on summary probation for 48 months, fined a total of $1,864.00, ordered to enroll in a 3-month licensed first-offender alcohol and other drug education and counseling program, perform 10 days community service, and his driver's license revoked for a period of one (1) year no exceptions.

17. On March 27, 2014, the Department initiated an Internal Affairs Administrative Investigation (IAB) to determine whether Appellant relative to his arrest had committed any violations of the Department's Manual of Policy and Procedures (MPP).

18. As a result of the IAB Administrative Investigation, Appellant was found to have violated two (2) sections of the Department's MPP, to wit: Section 3-01/030.05, General Behavior, specifically, "Conduct on or off duty which causes embarrassment to the Department"; and Section 3-01/040.75, Failure to Make Statements and/or Making False Statements During Departmental Internal Investigations, specifically, "Knowingly giving untruthful or misleading statements during internal investigations". Both violations carry disciplinary action option of imposing discharge or the lesser quantum of discipline starting at a Written Warning for the General Behavior violation and a 25 days Suspension for the Making False Statements violation.

19. The final decision-maker, Eric Parra settled on imposing a 30 days suspension as opposed to leaning toward assessing the ultimate disciplinary action of Discharge. In making his determination Parra followed the procedure of considering the extant aggravating factors as off-set by the factors of mitigation. But additionally, Parra went a step beyond the usual and accepted procedure of determining the appropriate quantum of discipline to be assessed on an analysis of the written record only, by initiating a conversation with Appellant's superior, Captain Dempsey who swayed Parra to downgrade his initial inclination to impose discharge to assess a 30 days suspension without pay in the alternative.

CONCLUSIONS OF LAW

1. In answer to issue Number 1 as defined by the Commission, the Hearing Officer upon all written evidence and testimony comprising the record proceedings before him finds the allegations contained in the Department's letter of February 26, 2015, to be true.

2. In answer to issue Number 2, the Hearing Officer determines the Department met its burden of proof by a preponderance of the evidence to support its position that with regard to the charge of knowingly giving untruthful or misleading statements during internal investigations, Appellant willingly obfuscated and rendered untruthful testimony pertaining to the question of the amount of alcohol he consumed on the evening of October 14, 2013 and into the morning of October 15, 2013 prior to being stopped by Los Angeles Police Officers for excessive speeding going 55 to 60 miles per hour on Hollywood Boulevard, a heavily trafficked roadway and pedestrians present with a posted speed limit of 35 miles per hour. For lack of sufficient evidence but not totally lacking in substance, that is, strong indications Appellant proffered misleading testimony in answer to questions regarding working off-duty security as outside employment, the Department fell short in substantiating this charge by a preponderance of the evidence. However, of the two (2) violations under this section of the MPP, Section 3-01/040.75, the Department viewed Appellant's untruthful and misleading testimony regarding his consumption of alcohol to be the more egregious. On the second charge of violating the General Behavior section of the MPP, Section 3-01/030.05, specifically, "conduct on or off duty which causes embarrassment to the Department", the Department proved this charge by a preponderance of the evidence as required.

RECOMMENDATION

The Hearing Officer concurs in the Department's disciplinary action of assessing Appellant a 30 calendar days suspension without pay notwithstanding the absence of any prior discipline for two (2) reasons, to wit: 1) the Department's diligent and comprehensive review and analysis of the written evidence obtained by the IAB's Administrative Investigation substantiating the MPP violations committed by Appellant and the extra mile the final decision-maker went in conferring with Appellant's superior in the chain of command to secure his view of Appellant's work performance and potential never to engage in similar conduct in the future; and 2) the record evidence in its entirety persuades the Hearing Officer that Appellant intentionally engaged in deceptive and evasive behavior first with LAPD Officers [redacted] and [redacted] and then with IAB Investigator Wessol to hide the degree to which he was intoxicated when stopped for speeding and then arrested for DUI alcohol and excessive speeding. Had he not been ordered by Department Captain Dyer to submit to a breathalyzer test at the Hollywood Station, Appellant would have continued to decline/refuse to submit to alcohol testing to reveal his level of intoxication.

The Hearing Officer is persuaded the Department exceeded the required preponderance of the evidence to prove Appellant committed the two (2) MPP violations he was charged with and that these two (2) infractions warranted the imposition of the 30 calendar days suspension without pay.

George Edward Larney

Hearing Officer

July 11, 2016

CITY ATTORNEY DISCLOSURE STATEMENT

OFFICERS - FORM TO BE COMPLETED ON ALL FELONY AND MISDEMEANOR ARRESTEES
DETECTIVES - FORM TO BE FILED WITH CITY ATTORNEY ONLY
Answer all questions to the best of your personal knowledge.

Type of Report	Booking No.	DR No.
DUI REFUSAL	3743174	

1. Reports: To your knowledge, what reports (except personnel investigations) were prepared in relation to this investigation?
   ☒ Arrest ☐ Crime ☐ Property ☐ PCD ☐ Follow-up ☐ Vehicle (CHP 180) ☐ CHP 555
   ☒ DMV-DS367 Other: ______

2. The following items exist: **Photographs** (include C#) ______
   Video tape (including DICV and digital imaging) ______
   Audio tape (including officer's personal tape) ☒ YES ☐ NO Other: ______

3. Has there been or is there a pending Use of Force investigation? ☐ YES ☒ NO
   If YES, provide the name and serial number of supervisor conducting investigation.
   Name ______ **Serial No.** ______

4. List the NAME, ADDRESS, PHONE NUMBER and DATE OF BIRTH of all CIVILIAN WITNESSES not named in any report(s), whether interviewed or not.

Name	Address	Phone No.	DOB

5. List the NAME, SERIAL NUMBER, ASSIGNMENT and ROLE of all OFFICERS not named in the report(s) who were percipient witnesses or otherwise involved in this incident:

Officer Name	Serial No.	Assignment	Officer's Role

6. List the NAME, SERIAL NUMBER, DEPARTMENT/AGENCY and UNIT NUMBER of all FIRE DEPARTMENT and EMERGENCY MEDICAL PERSONNEL who responded to this incident, but were not named in any report(s):

Name	Serial No.	Department/ Agency	Unit No.

7. List any SUSPECT(S) STATEMENT(S) not included in any report(s):
   ______

8. List any CIVILIAN WITNESS(ES) STATEMENT(S) not included in any report(s):
   ______

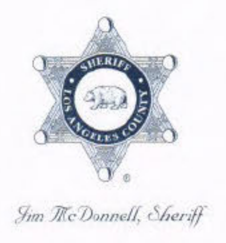
9. Are there any RETAINED OFFICER NOTES or DIAGRAMS not included in any report(s)? ☐ YES ☒ NO
   If YES, identify:

Officer Name	Serial No.	Assignment	Item

10. List any known facts not included in any report(s) that might be considered as favorable to the defense or damaging to the prosecution, or which might negatively reflect on the credibility of any prosecution witness:
    ______

[redacted] above questions are true to the best of my personal knowledge.

[redacted]		Div. of Assignment	Role in Arrest	Date
[redacted]	[redacted]	WTD	ATO	10-15-13
[redacted]	[redacted]	WTD	AO	10-15-13



Jim McDonnell, Sheriff

County of Los Angeles

Sheriff's Department Headquarters

4700 Ramona Boulevard

Monterey Park, California 91754-2169



February 26, 2015

Deputy Lovell Brown, [redacted]

Dear Deputy Brown:

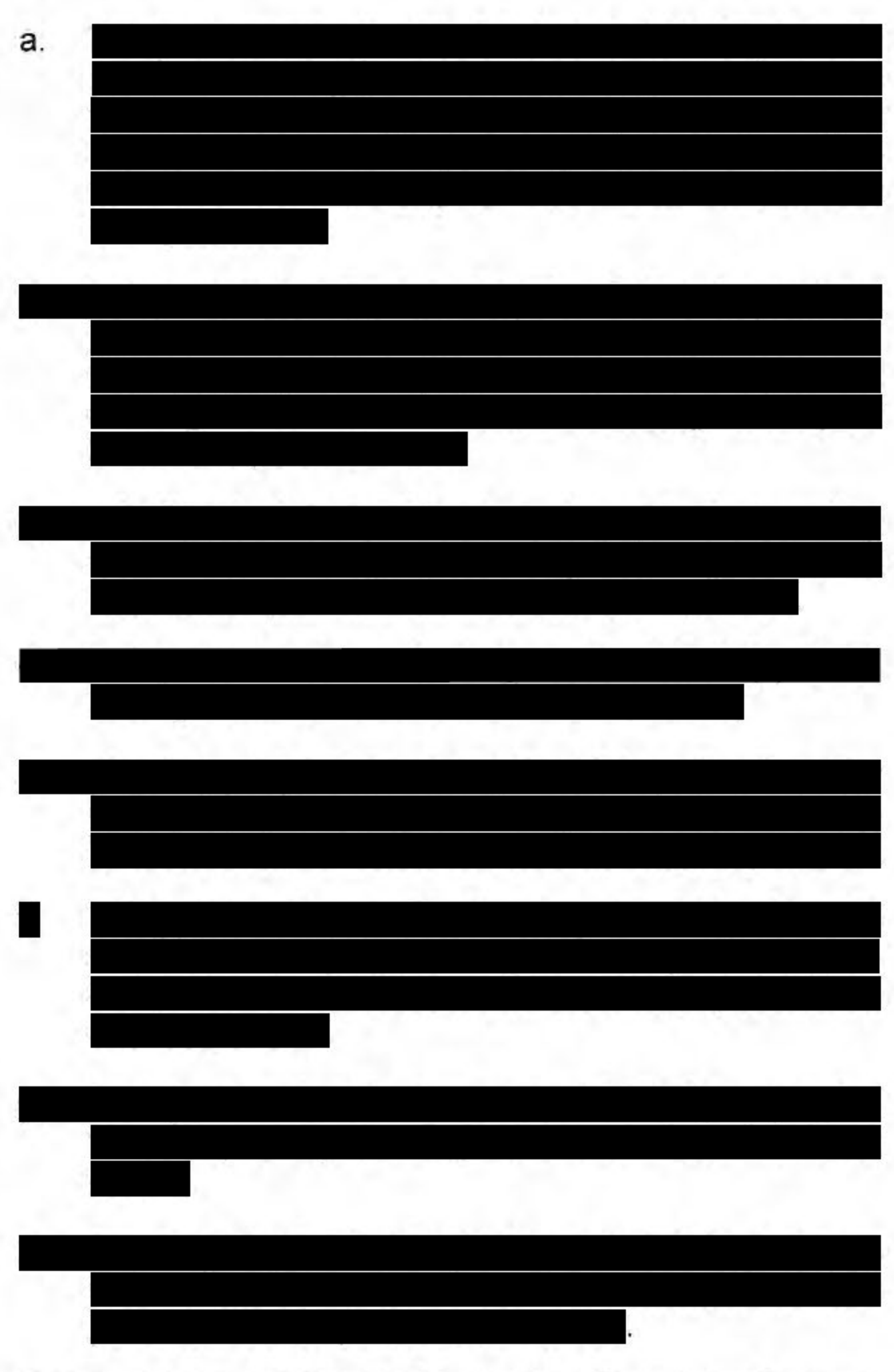
On December 22, 2014, you were served with a Letter of Intention, indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under IAB File Number 2343020. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. However, after review and consideration of the response submitted to support your position, Department executives determined that the recommended discipline is appropriate.

You are hereby notified that you are suspended without pay from your position of Deputy Sheriff, Item No. 2708A, with this Department for a period of thirty (30) days effective March 9, 2015 through April 7, 2015.

An investigation under File Number IAB 2343020, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1.  [redacted]



a. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] [redacted]

[redacted]

[redacted].

2. That in violation of Manual of Policy and Procedures Sections 3-01/040.75, Failure to Make Statements and/or Making False Statements During Departmental Internal Investigations, on or about March 13, 2014, you failed to make full, complete and/or truthful statements regarding the amount of alcohol you consumed prior to being arrested by personnel from the Los Angeles Police Department on October 15, 2014, and/or your employment status as a security agent when you were

operating [redacted] vehicle of on October 15, 2013, as evidenced by, but limited to:

a. stating, "from my knowledge, I had one beer," when asked how much alcoholic beverage did you drink on October 14, 2014 or leading into October 15, 2014; and/or,

b. stating, "No," when asked if you were working an off duty job when you were stopped by personnel from the Los Angeles Police Department; and/or,

c. stating "No, sir," when asked if you worked in an off duty capacity in the past year, from March 13, 2013.

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet which are incorporated herein by reference."

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of this incident has been made by Department executives, including your Unit and Division Commanders.

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of the incident has been made by the Department's Equity Oversight Panel, Department executives, and your Unit and Division Commanders.
You will hereby take notice that any future acts of misconduct may result in more severe disciplinary action.

Within fifteen (15) business days from the date of service of this notice of suspension, you may request a hearing on these charges before the Los Angeles County Civil Service Commission, 222 North Grand Avenue, Los Angeles, California 90012.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

JIM McDONNELL, SHERIFF

Original Signed

Joseph E. Dempsey, Captain
Men's Central Jail

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures and Civil Service Rules {when applicable}.

JED:DLM:ym

c: Advocacy Unit
Eric G. Parra, Chief, Custody Services Division-General Population
Internal Affairs Bureau
Personnel Administration
Men's Central Jail/Unit Personnel File